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STATE FOR WHA/BSC, PM

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TAGS: [MOPS](#) [MARR](#) [PREL](#) [CI](#)

SUBJECT: CHILE TO REQUIRE ACCREDITATION OF DOD ELEMENTS TO
MISSION, SOFA LEGISLATION STILL PENDING

REF: A. SANTIAGO 02499

- [1](#)B. SANTIAGO 02453
- [1](#)C. SANTIAGO 02362
- [1](#)D. STATE 184559
- [1](#)E. SANTIAGO 01281
- [1](#)F. SANTIAGO 00241
- [1](#)G. 05 SANTIAGO 00821
- [1](#)H. 05 STATE32217
- [1](#)I. 05 SANTIAGO 00406
- [1](#)J. 05 STATE 29133
- [1](#)K. 05 SANTIAGO 00392
- [1](#)L. 04 STATE 247760
- [1](#)M. 04 SANTIAGO 02650

Classified By: Ambassador Craig Kelly for reasons 1.4(b) and (d).

[1](#)1. (C) Summary: Foreign Ministry Legal Affairs reiterated December 14 that the MFA does not have legal authority to extend diplomatic status or protections "equivalent to" those of Mission administrative and technical personnel to DOD personnel temporarily in Chile for exercises or military exchange programs -- only Congress has that authority. The MFA is willing to accredit DOD personnel to the Embassy as was done in 2004 for POTUS' participation in the APEC Summit, and in 2005 for the first year using this mechanism to provide protections for regular DOD-sponsored activities in Chile. The draft law authorizing the GOC to negotiate Status of Forces Agreements (SOFAs) without Senate approval has not yet been submitted to Congress. Congressional approval could take two years. End Summary.

[1](#)2. (C) Poloff contacted Foreign Ministry Legal Affairs Advisor Alejandra Quezada December 14 to confirm Post's understanding (ref A) the GOC would require us to accredit to the Embassy DOD personnel in Chile temporarily for exercises. The MFA does not have legal authority to extend "equivalent status," according to Quezada. Legal Affairs had completed its legal review of the U.S. proposal, prompted by the change in language from last year requesting written guarantees for wearing uniforms, carrying arms, and travel to and from Chile on U.S. ID and travel orders (ref D). Legal Affairs Director Claudio Troncoso would brief the findings to Foreign Ministry Director General Carlos Portales. She estimated Post would receive the MFA's formal reply before the second week in January.

[1](#)3. (C) Quezada said that the draft law allowing the GOC to negotiate SOFAs had been packaged and "given a number" for introduction to Congress by the Presidency's Secretariat General. However, the Secretariat had not yet submitted the package to Congress, nor could Quezada estimate when it would be introduced. Quezada opined that given the complexity and

scope of the legislative proposal, once submitted to Congress "it could take a couple of years" for it to be finally approved.

BACKGROUND

14. (C) Post notes that the GOC likely considers that it never explicitly accepted the formulation of "equivalent status." MFA Diplomatic Note 21124 of November 17, 2004 (ref M) granted status to DOD and other personnel supporting POTUS participation in the APEC Summit. In that note, the GOC stated these personnel would be accredited to the Embassy as administrative and technical personnel, and be authorized to carry weapons, wear uniforms, and enter and exit Chile on U.S. ID and travel orders -- conditions the U.S. accepted in ref L.

15. (C) For CY 2005 DOD activities in Chile, Post submitted Embassy Diplomatic Note 033, dated February 18, 2005 (refs J and K), which contained the "equivalent status" formulation. The GOC replied (ref I) that "the GOC could, with regard to the operations to take place soon, consent to grant such personnel the privileges and immunities established by the Vienna Convention on Diplomatic Relations of 1961 for administrative and technical personnel of diplomatic missions. If the proposed terms are acceptable to the Embassy, the Embassy should proceed to accredit the mentioned personnel with the Ministry of Foreign Relations." This note did not grant authority to carry weapons, wear uniforms, or enter and exit Chile on U.S. ID and travel orders. The Department authorized Post to accept the terms of MFA Diplomatic Note 2722 (ref H), with the caveat that Post obtain verbal assurances to the effect that U.S. personnel would be granted the authority to carry weapons, wear uniforms, enter and exit Chile on U.S. ID and travel orders

-- assurances which were subsequently obtained. Pursuant to this agreement, Post provided to the MFA for accreditation complete lists of participants in DOD-sponsored activities in Chile in 2005.

16. (C) In 2006, however, the GOC dropped the explicit reference to accreditation: MFA Diplomatic Note 886 of January 27, 2006 and 8775 of June 7, 2006 (refs E and F) contained language stating "...the Ministry of Foreign Relations agrees to grant to the above mentioned personnel, for the period // March through June // July through December // of the current year, the regime of privileges and immunities established by the Vienna Convention on Diplomatic Relations of 1961 for administrative and technical personnel of diplomatic missions." Post did not provide participants lists in DOD-sponsored activities in Chile to the MFA for accreditation in 2006, but did provide complete lists to the Chilean military for coordination. At Post's urging, GOC officials provided verbal assurances that DOD personnel would be allowed to carry weapons and wear uniforms while on duty. They did NOT/NOT provide such assurances about the entry and exit from Chile on U.S. ID and travel orders, as reported in ref E.

17. (C) Comment: One could argue that the MFA, by dropping language requiring accreditation in the diplomatic note exchanges in 2006, tacitly accepted the U.S. request for "equivalent status." But that would be a stretch and Post finds it unlikely that DG Portales will reject the MFA Legal Affairs' interpretation. We expect the MFA's formal response to track with what Quezada told us December 14. Neither is Congress likely to pass SOFA-enabling legislation in time to provide protections for CY 2007 DOD activities in Chile.

KELLY